Supreme Court, U.S.
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No.

In the Supreme Court of the United States

RODOLFO VELASQUEZ,
Petitioner,

Vs.

CALIFORNIA SUPERIOR COURT FOR THE COUNTY OF ALAMEDA; BILL LOKYER; COMISSION ON JUDICIAL PERFORMANCE; HARRY SHEPPARD; RONALD M. GEORGE; McGUINESS, P.P.; GEORGE HERNANDEZ; MARCIA TAYLOR; JUAN JOSE TELLEHCEA. et al.,
Respondents.

Petition for Writ of Certiorari to the United States court of Appeals for the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI

Rodolfo Velasquez
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In Propia Persona

QUESTIONS PRESENTED FOR REVIEW

1. Isn't time to place a stop to the abuses committing by states courts to innocent persons represented them in propia persona in courts, consequently declare them vexatious litigants, and further penalizing them for using the states courts throughout the County and imposing unreasonable burden on them such as excessive fines?

2. Does a party in propia persona should be punished with gross-excessive fines for using states courts without being represented by an attorney even if the Excessive Fine Clause of the U.S. Constitution mandates the contrary?

3. Isn't time to stop the punishing to thousands of parties in propia persona the states courts already punished and the thousands of parties will be punished just for using the states courts across the Country?

4. Is it not the time to break down the attorneys' monopoly that control the courts throughout the Country, and give back to the citizens their fundamental right to use the states courts without any oppression to represent themselves if they choose to, and to stop the states courts from imposing unfair sanctions just for place a foot step in a state court by a party in propia persona?

INTERESTED PARTIES

The following parties are interested on this matter:

THE SUPERIOR COURT OF CALIFORNIA OF ALAMEDA COUNTY;
BILL LOCKYER;
COMISSION OF JUDICIAL PERFORMANCE;
HARRY SHEPPARD;
RONALD M. GEORGE;
P.J. McGUINESS;
GEORGE HERNANDEZ;
MARCIA TAYLOR; and
JUAN JOSE TELLECHEA.

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PROOF OF SERVICE BY MAIL

I declare that I'm over the age of eighteen years old and not a party to the subjected case. I reside in San Francisco County at 62 Lobos Street, San Francisco, California 94112. Also, I declare, that on June 5, 2006; I served the following documents.

PETITION FOR WRIT OF CERTIORARI

I affixed sufficient U.S. Postage to an envelope and I mailed to:

Tom Blake
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

U.S. Court of Appeals for the Northern District of California
450 Golden Gate Avenue, 16 Floor
San Francisco, CA 94102

U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94105

I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, executed on June 6, 2006.

Salvador Velasquez

JURISDICTION

The jurisdiction of this Court rests upon 28 U.S.C. § 1257(a). Petitioner seeks reversal of the U.S. Court of Appeals for the Ninth Circuit's Decision and Mandate as Explained below, violates the Excessive Fine Clause U.S.C.A. Const.Amend 8.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This Court in United *States v. Bajakajian* 118 S.Ct. 2028 (1998) opposed an excessive fine imposed to a party was an unacceptable act that intended to violate the principles of the U.S. Constitution and Mr. Bajakajian's constitutional rights. The fine imposed on Velasquez by the State of California Superior Court in the amount of $31,895.00 plus $16,445.76 forfeiture money of property tax paid, plus interest in the amount of $11,105.00 totaling $59,445.76, is an amount that clearly violates the principles of the excessive fine clause compare with the level of offense committed. In Velasquez' case, the offense is identified as he used the state court without being represented by an attorney and the $59,445.76 amount Petitioner is facing for being a vexatious litigant in California clearly violated his constitutional rights.[1]

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[1] The Clause limits the Government's power to extract payments, whether in cash or in kind, as punishment for some offense. *Austin v. United States* 509 U.S. 602, 609-610, 113 S.Ct. 2801, 2805-2806,

However, Petitioner claims violations of his Equal Protection rights under warranties of the Eight and Fourteenth Amendment of the U.S. Constitution.[2] It's a mystery that the district court and the court of appeals characterized the punishment Petitioner Velasquez suffered from the State of California as attorney fees, when in fact the court's act shows the contrary. The Superior Court split Velasquez from Carrillo, (the two original join plaintiffs) Velasquez to be penalized with large sum of money, and Carrillo is free of charge. This Court should notice, that Velasquez did not claim invalidation of California's so called vexatious litigant statute, Velasquez claimed violation of his civil rights as define on his equal protection clause.

Petitioner entered in debt with a party named (Juan Jose Tellechea) who claims the amount of $59,445.76 against Petitioner Velasquez, claiming the fact that Velasquez is a vexatious litigant in California under the meaning of California Civil Procedure §§ 391 – 391.7 on which the subjected code violates the Excessive Fines Clause of the Eight Amendment of Petitioner Rodolfo Velasquez' rights.

125, L.Ed.2d 488. Payment in kind—are thus "fine" if they constitute punishment for an offense.

[2] The Eight Amendment provides: "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

STATEMENT OF THE CASE

The Superior Court of California for the County of Alameda split Rodolfo Velasquez form Alberto Carrillo as join complainant, Petitioner Velasquez to be punished with $31,895.00, forfeiting money paid for delinquent property tax in the amount of $16,445.76, and $11,105.00 on interest, totaling $59,445.76 for being a vexatious litigant in California and Alberto Carrillo was set [f]ree of charge.

The Superior Court claims that is justifiable to impose on Petitioner Velasquez the above cited amount as attorney fees because his is the vexatious litigant [no] his join complainant Alberto Carrillo. This Court should sense, that the state court camouflaged the action in order to advocate against a party represented in court in propia persona.

SUMMARY OF ARGUMENT

Every since the California's vexatious litigant statute so called "vexatious litigants" CCP §§ 391 – 391.7 was enacted in 1963, California Supreme Court has refused to hear any case involving a vexatious litigant person. The State highest Court on the other hand at all times has refused to hear a case involving a vexatious litigant person, and therefore failing to do its job on these matters.

ARGUMENT

The failure of the State of California Supreme Court to review the constitutionality of the State of California's Code of Civil Procedure §§ 391 – 391.7 opened the door for unfair justice decisions and discrimination against a party in propia Persona such as Petitioner. The unfair justice provided is a matter of all state courts throughout California.

The so called vexatious litigant statute on Petitioner's case is the "root" used by the State of California Superior Court to punish the Petitioner with an amount exciding a reasonable and comprehensible means compare with the level of offense committed, in Petitioner's case just for using the state courts without the assistance of an attorney.[3]

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[3] It does no follow, of course, that all modern civil in rem forfeitures are nonpunitive and thus beyond the coverage of the Excessive Fines Clause. Because some recent federal forfeiture laws have blurred the traditional distinction between civil in rem and criminal in personam forfeiture, we have held that a modern statutory forfeiture is a "fine" for Eighth Amendment purposes if it constitute punishment even in part, regardless of whether the proceeding is styled in rem or in personam. See *Austin v. United States*, supra, at 621-622, 113 S.Ct., at 2811-2812.

1. THE FIRST STEP BEFORE CONTINUANCE IN THIS CASE, IS TO FIX THE JURISDICTION ON THE U. S. DISTRICT COURT.

Petitioner did not have the opportunity to his case's merits be heard in the U.S. District Court, it immediately applied in a motion to dismiss Rooker-Feldman Doctrine to bar Petitioner's claim and later affirmed by the U.S. Ninth Circuit Court of Appeals citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 135 S.Ct. 1517, 1521 (2005) to dispose the appeal. **(Appendix No. 5, 8)**

Federal Courts throughout the Country are applying Rooker-Feldman Preclusion irrationally to bar cases with sufficient merits to be heard in federal courts; however, the subjected case is one of those: It is undisputed that Velasquez is a federal plaintiff claiming that the State of California Superior Court violated his constitutional rights. Also, it's undisputed, that California Superior Court engaged in a illegal act by punishing Petitioner against the mandates of his civil rights and the mandates of the U.S. Constitution. The "illegal act" committed in this case by California Superior Court is sufficient reason for the U.S. District Court to hear Velasquez' claim against the State of California. The U.S. District Court and further the Ninth Circuit again misperceived the narrow ground when *Rooker-Feldman* Preclusion can be applied.

In Exxon Mobil, this Court cited: "In parallel litigation, a federal court may be bound to recognize the claim-and issue preclusive effects of a state-court judgment, but federal jurisdiction over an action does not terminate automatically on the entry of judgment in the state court. Nor does § 1257 stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff presents an independent claim, even one that denies a state's legal conclusion in case to which the plaintiff was a party, there is jurisdiction and state law determines whether the defendant prevails under preclusion principles."

Velasquez has presented to U.S. District Curt a separate claim from the vexatious litigant issue. Velasquez presented to U.S. District Court a complaint, complaining of an excessive and unjust charge been imposed on him. It is clear, that the root of the excessive charge against Velasquez was the so called vexatious litigant California statute, but Petitioner is not claiming invalidation of the so called vexatious litigant statute. So, is clear that Petitioner Velasquez presented an independent claim that it is not suppose to be barred by *Rooker-Feldman* Doctrine.

II. THE QUESTION OF WHETHER A FINE IS CONSTITUTIONALLY EXCESSIVE IS SUBJECT TO DE NOVO REVIEW. U.S.C.A.CONSTITUTION AMENDMENT EIGHT.

Petitioner Velasquez claimed in U.S. District Court and the U.S. Court of Appeals that the State of California Superior Court subjected him with an unreasonable amount imposed on him as sanction in the amount of $59,445.76 for being a vexatious litigant in California. Velasquez is challenging the amount imposed on him citing, that the amount violates his constitutional rights and by that, his claim should be appropriate for review by *de novo* grounds in federal courts. The U.S. Court of Appeals for the Ninth Circuit affirmed the District Court's dismissal of Petitioner's claim citing *Rooker-Feldman* Doctrine; however both courts erred by misinterpreting *Rooker-Feldman* Doctrine and then deciding Petitioner's claim erroneously. The claim of the civil rights violation under the excessive fine clause constitute a separate claim from the original claim of attempt to invalidate the so called vexatious litigant statute §§ 391 – 391.7.

This Court in *U.S. v. Bajakajian* 118 S.Ct. 2028 (1998) cited: "In applying this standard, the district courts in the first instance, and the courts of appeals, reviewing the proportionally determination de novo, must compare the amount at issue to the gravity of the defendant's offense. If the subject amount is grossly disproportional

to the gravity of the offense, it is unconstitutional. This Court in a foot note concluded: "...The factual findings made by the district court in concluding the excessiveness inquiry, of course, must be accepted unless clearly erroneous. See *Anderson v. Bessemer City,* 470 U.S. 564-575, 105 S.Ct. 1504, 1511-1512, 84 L.Ed.2d 518 (1985). But the question whether a fine is constitutionally excessive calls for the application of a constitutional standard to the facts of a particular case, and in this context de novo review of the question is appropriate. See *Ornelas v. United States*, 517 U.S. 690, 697, 116 S.Ct. 1657, 1662, 134 L.Ed.2d 911 (1996).

REASONS FOR GRANTING THE PETITION

The state courts across the Country already declared vexatious litigants to ¼ of the adult population in the United States. In California itself around 5000 persons have being declared vexatious litigants since the California's Code of Civil Procedure §§ 391 – 391.7 was enacted in 1963. If courts throughout the United States continue declaring vexatious litigants at the present rate, soon everybody in the United States will be a vexatious litigant and be barred from step in any court of the United States. So, this is a matter that [concerns] important issue for this Court to act, therefore, it should grant Petitioner's petition.

Petitioner has abbreviated the contention of his claim in this brief, and requests this Court to overlook the

opposing parties' disclosure that Velasquez has inundated the state courts with cases without merits. This Court should focus on the main issue included in this brief, and that's the gross-excessive find imposed on Velasquez for using state courts in California. The State of California's argument that, that it declares vexatious litigants to preserve judicial resources is merely a false statement. This Court should overlook the states unfounded argument. There are sufficient methods to terminate a claim within the states judicial procedures without going to the extremes against a party and without violating no body constitutional rights, e.g., motion to dismiss, motion for judgment on the pleadings, summary judgment motions etc.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be vacated and the case remanded for further proceedings, *Rooker-Feldman Doctrine* was misused by District Court and Court of Appeals.

Respectfully Submitted,

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In pripia Persona